

UNITED STATES OF AMERICA

Plaintiff

V.S.

Howard A. Burke

Defendant

Case No: 1:CR-00-023-02

FILED
HARRISBURG, PA

MAR 19 2008

MARY E. D'ANDREA, CLERK
Per [Signature]

**Motion to Request Modification of Sentence
Pursuant to Title 18 U.S.C 3582 (c)(2)**

NOW COMES the Defendant, Howard Burke, pro se, and respectfully moves this Honorable Court, pursuant to 18 U.S.C.A. sub-section 3582 (c)(2) and sub-section 1B1.10 of the Sentencing Guidelines, to reduce defendants sentence based upon the amendment to 1B1.10 of the Sentencing Guidelines becomes effective November 1, 2007 and retroactive March 3, 2008 concerning crack cocaine.

In support thereof, Defendant states as follows:

1. On 1-19-00, the Defendant was sentenced to a term of imprisonment of 135 months, by this Honorable Court on the following counts Possession with intent to manufacture and distribute 50 grams or more (crack cocaine)
2. Applying the applicable provisions of the guidelines as they existed on the date of the defendant's sentencing for 392.38 - 454.38 grams or more of crack cocaine, based on

sub-section 2D1.1(c) of the Guidelines this gave the defendant a base level of 33.

3. On December 11, 2007, the Sentencing Commission publicly voted unanimously to make the crack cocaine amendment apply to prisoners sentenced before Nov. 1, 2007 for crack cocaine offences. The effective date of retroactivity is March 3, 2008. This would lower the defendants base level to 31.

4. As established under sub-section 1B1.10 of the Sentencing Guidelines, this amendment is to applied retroactively. Therefore the defendant is entitled to be resentenced under the retroactively applied amendment.

5. After the appropriate adjustment are calculated, the Defendant's offences level for the purposes of resentencing is level 31.

6. The Defendant's criminal history computation remains a Category 1 as computed in the Presentence Report.

7. The suggested guideline range for an Offence Level 31 with a Criminal History Category of 1 is 108 to 135 months.

8. If this Honorable Court maintains it's position and imposes the same area of the new range, 120 months would be the Defendants new sentence.

WHEREFORE, Based on the foregoing arguments and authorities, this Honorable Court is respectfully urged to reduce the Defendant's sentence and to enter a new Judgment in a Criminal Case reflecting said change in the Defendant's sentence, and any other and further relief which this Honorable Court deems just and fair.

Dated: _____

Respectfully submitted,

Howard Burke

COMMITTED NAME:

Howard Burke

REG. NO. & QTRS:

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R.C.D.C. III

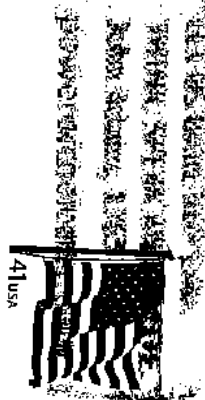
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MINIARNO & CO. DESIGN

11 MAY 2008 PM 3 1



United State District Court

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